



[3510-16-P]

**DEPARTMENT OF COMMERCE**

**United States Patent and Trademark Office**

**37 CFR Part 11**

**[Docket No.: PTO-C-2011-0089]**

**RIN 0651-AC76**

**Implementation of Statute of Limitations Provisions for Office Disciplinary Proceedings**

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice of proposed rulemaking, request for comments.

**SUMMARY:** The Leahy-Smith America Invents Act (AIA) requires that disciplinary proceedings be commenced not later than the earlier of the date that is 10 years after the date on which the misconduct forming the basis of the proceeding occurred, or one year from the date on which the misconduct forming the basis of the proceeding was made known to an officer or employee of the United States Patent and Trademark Office (Office or USPTO), as prescribed in the regulations governing disciplinary proceedings. The Office initiates disciplinary proceedings via three types of disciplinary complaints: complaints predicated on the receipt of a probable cause determination from the Committee on Discipline; complaints seeking reciprocal discipline;

and complaints seeking interim suspension based on a serious crime conviction. This notice proposes that the one-year statute of limitations commences, with respect to complaints predicated on the receipt of a probable cause determination from the Committee on Discipline, the date on which the Director, Office of Enrollment and Discipline (OED Director) receives from the practitioner a complete, written response to a request for information and evidence; with respect to complaints based on reciprocal discipline, the date on which the OED Director receives a certified copy of the record or order regarding the practitioner being publicly censured, publicly reprimanded, subjected to probation, disbarred, suspended, or disciplinarily disqualified; and, with respect to complaints for interim suspension based on a serious crime conviction, the date on which the OED Director receives a certified copy of the record, docket entry, or judgment demonstrating that the practitioner has been convicted of a serious crime.

**DATES:** To be ensured of consideration, written comments must be received on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Comments should be sent by electronic mail message over the Internet addressed to: OED\_SOL@uspto.gov. Comments may also be submitted by mail addressed to: Mail Stop OED-Ethics Rules, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313-1450, marked to the attention of William R. Covey, Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline.

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (<http://www.regulations.gov>) for additional instructions on providing comments via the Federal eRulemaking Portal.

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the Internet because sharing comments with the public is more easily accomplished. Electronic comments are preferred to be submitted in plain text, but also may be submitted in ADOBE® portable document format or MICROSOFT WORD® format. Comments not submitted electronically should be submitted on paper in a format that facilitates convenient digital scanning into ADOBE® portable document format.

Comments will be made available for public inspection at the Office of Enrollment and Discipline, located on the 8<sup>th</sup> Floor of the Madison West Building, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the Office's Internet Web site (<http://www.uspto.gov>). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

**FOR FURTHER INFORMATION CONTACT:** William R. Covey, Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline, by telephone at 571-272-4097.

## **SUPPLEMENTARY INFORMATION:**

Under 35 U.S.C. 32, the Office may take disciplinary action against any person, agent, or attorney who fails to comply with the regulations established under 35 U.S.C. 2(b)(2)(D).

Procedural regulations governing the investigation of possible grounds for discipline and the conduct of disciplinary proceedings are set forth at 37 CFR 11.19 et seq.

Section 32 of Title 35, United States Code, as amended by the AIA, requires that a disciplinary proceeding be commenced not later than the earlier of either 10 years after the date on which the misconduct forming the basis for the proceeding occurred, or one year after the date on which the misconduct forming the basis for the proceeding is made known to an officer or employee of the Office, as prescribed in the regulations established under 35 U.S.C. 2(b)(2)(D). Thus, the AIA's amendment directs the Office to establish regulations clarifying when misconduct forming the basis for a disciplinary proceeding is made known to the Office.

Prior to the AIA's amendment to 35 U.S.C. 32, disciplinary actions for violations of the USPTO Code of Professional Responsibility were generally understood to be subject to a five-year statute of limitations pursuant to 28 U.S.C. 2462. See, e.g., Sheinbein v. Dudas, 465 F.3d 493, 496 (Fed. Cir. 2006). With the AIA's new 10-year limitation period, Congress provided the Office with five additional years to bring an action, thus ensuring that the Office had additional flexibility to initiate "a [disciplinary] proceeding for the vast bulk of misconduct that is discovered, while also staying within the limits of what attorneys can reasonably be expected to remember," Congressional Record S1372-1373 (daily ed. March 8, 2011) (statement of Sen.

Kyl). Therefore, the new 10-year limitation period indicates congressional intent to extend the time permitted to file a disciplinary action against a practitioner who violates the USPTO Code of Professional Responsibility, rather than to allow such actions to become time-barred. See id. at S1372 (“[A] strict five-year statute of limitations that runs from when the misconduct occurs, rather than from when it reasonably could have been discovered, would appear to preclude a section 32 proceeding for a significant number of cases of serious misconduct”).

The one-year limitation period in the AIA reflects that disciplinary actions should be filed in a timely manner from the date when misconduct forming the basis of a disciplinary complaint against a practitioner is made known to “that section of PTO charged with conducting section 32 proceedings,” Congressional Record S1372 (daily ed. March 8, 2011) (statement of Sen. Kyl). The proposed regulation satisfies the goal of commencing section 32 proceedings without undue delay.

Generally speaking, there are four steps taken by the OED Director prior to the filing of a § 11.32 disciplinary complaint against a practitioner: (1) preliminary screening of the allegations made against the practitioner, see § 11.22(d); (2) requesting of information from the practitioner about his or her alleged conduct, see § 11.22(f)(1)(ii); (3) conducting a thorough investigation after providing the practitioner an opportunity to respond to the allegations, see § 11.22(a); and (4) submitting the investigated case to the Committee on Discipline for a determination of whether there is probable cause to bring charges against the practitioner, see § 11.32.

The first step is the preliminary screening of allegations to evaluate whether they merit providing the practitioner the opportunity to address them. Allegations are often incomplete and do not provide the OED Director with a full picture of what may have transpired. In other words, mere allegations do not necessarily provide the OED Director with a reasonable basis for automatically seeking information from the practitioner regarding a possible ethical violation; therefore, the OED Director always conducts an initial review of the allegations. Moreover, the OED Director recognizes that issuing a request for information to the practitioner — the second step — typically triggers anxiety for the practitioner, may interfere with the practitioner's practice, and may cause the practitioner to incur legal expenses in responding to investigative inquiries by OED. For this reason also, OED does not contact the practitioner automatically upon receipt of information alleging a practitioner committed an ethical violation. In short, the OED Director seeks the practitioner's side of the story, if at all, only after the OED Director preliminarily screens the information and determines that possible grounds for discipline exist. See 37 CFR § 11.22(d).

During the preliminary screening process, an OED staff attorney reviews the allegations to determine whether they implicate any of the Disciplinary Rules of the USPTO Code of Professional Responsibility. To this end, the attorney may seek out additional evidence (review Office records, request additional information from the person making the allegations or from third persons, etc.) to ensure that the matter is disciplinary in nature and the allegations are supported by objective evidence.

The OED's preliminary screening may obviate the need to seek information from the practitioner because the screening often reveals that the allegations do not present a basis for filing a § 11.32 disciplinary action against the practitioner. Under such circumstances, the OED Director closes the case without contacting the practitioner. Hence, the preliminary screening helps ensure that a practitioner is not subjected to a premature request for information or its attendant stress, turmoil, and cost. The screening also ensures that the Office does not expend its limited resources seeking information from a practitioner unnecessarily.

After the preliminary screening, if the OED Director determines that the allegations establish possible grounds for discipline, the OED Director seeks the practitioner's side of the story — the second step prior to filing a § 11.32 action. Specifically, the OED Director requests information or evidence from the practitioner pursuant to § 11.22(f)(1)(ii). The practitioner will then have an opportunity to respond to the allegations levied against him or her. Typically, the OED Director does not and cannot have sufficient information to complete a thorough investigation — the third step — before the practitioner has had the opportunity to present his or her side of the story.

Based on current caseload and staffing levels, the OED Director has set a goal to complete the preliminary screening and issue a § 11.22(f)(1)(ii) request, when warranted, to the practitioner under investigation within 60 calendar days of the initial receipt by the OED Director of information suggesting possible misconduct. OED will allow the practitioner 30 calendar days to provide a complete, written response and, as discussed below, may grant a reasonable request for an extension of time to respond.

A complete response to an initial § 11.22(f) request frequently raises factual issues that require further investigation before the OED Director can determine whether actual grounds for discipline exist. Hence, after the OED Director receives the practitioner's response to the § 11.22(f)(1)(ii) request, the OED Director moves to the third step: conducting a thorough investigation of the allegations to uncover all relevant incriminating and exculpatory evidence. The third step is time-consuming because it involves the OED Director undertaking a thorough fact-finding (e.g., reviewing issues raised for the first time by the practitioner, obtaining information from any person who may be reasonably expected to provide information or evidence in connection with the investigation pursuant to § 11.22(f)(iii) and from non-grieving clients pursuant to § 11.22(f)(2)) and performing legal analyses of issues. It is in the interests of the public as well as the practitioner under investigation that OED conduct a thorough investigation prior to determining whether the matter should be submitted to the Committee on Discipline pursuant to § 11.32. Hence, such additional follow-up investigative and legal work can take several months to complete.

After completing an investigation of the allegations against a practitioner, the OED Director has the authority to close the investigation without pursuing disciplinary action, issue a warning to the practitioner, enter into a proposed settlement agreement with the practitioner, or convene the Committee on Discipline to determine whether there is probable cause to file a § 11.32 action against the practitioner. See 37 CFR 11.22(h). Based on current caseload and staffing levels, the OED Director has set a goal to submit a matter to the Committee on Discipline for a probable cause determination — the fourth step — within 10 months of the initial receipt by the OED Director of the allegations that a practitioner engaged in misconduct.



Under the proposed regulation, the one-year statute of limitations begins to run for § 11.32 actions when the OED Director receives the practitioner's complete, written response to a § 11.22(f)(1)(ii) request. The proposed regulation reflects that a complete response to a § 11.22(f)(1)(ii) request usually is a significant step in making a practitioner's misconduct known to the OED Director in an informed and meaningful way. This step in the process gives the practitioner an opportunity to respond to the allegations levied against him or her. Basic notions of fairness to the practitioner, and integrity of the process, are primary purposes for providing an opportunity to respond.

Additionally, the proposed regulation provides the OED Director with needed flexibility in obtaining information from the practitioner. On a case-by-case basis, the OED Director has the authority to grant extensions of time to respond to a § 11.22(f)(1)(ii) request for information. Such extensions may be important to the practitioner because they often give the practitioner the time needed to secure legal counsel, conduct his or her own inquiry, and prepare a complete, written response to the OED Director's request. The OED Director grants such requests where it is appropriate to do so, taking into consideration whether an extension would jeopardize the timely completion of the investigation in light of any approaching deadline under the statute of limitations. Historically, the OED Director has granted 30-, 60-, or even 90-day extensions of time to practitioners. Under the proposed regulation, the OED Director is able to continue to afford a practitioner a reasonable period of time to address allegations of ethical violations because the limitation period would not commence until after the practitioner provides a complete, written response.

The Office carefully considered, but decided against proposing, a regulation that commences the one-year limitation period for § 11.32 actions on the date on which the OED Director initially receives allegations about a practitioner. The Office did not choose such a regulation for three reasons. First, the Office usually receives information about a practitioner from a client who alleges that the practitioner acted improperly. While mere allegations of ethical violations may alert the Office that a client is subjectively dissatisfied with a practitioner, they often do not provide sufficient objective evidence that misconduct has occurred. The accuser's naked assertions about a practitioner rarely put the Office on notice of misconduct forming the basis of a disciplinary proceeding because such statements often do not provide a complete, objective picture of what transpired between the practitioner and the client. It is also unfair to the practitioner that the basis of a disciplinary proceeding be predicated only on the allegations levied against him or her without providing the practitioner an opportunity to respond to the allegations. As discussed above, this basic notion of fairness to the practitioner against whom allegations of misconduct have been made is one main purpose of the proposed regulation.

Second, a regulation that proposes commencing the one-year limitation period on the date the OED Director initially receives allegations about a practitioner's alleged misconduct would unnecessarily restrict the OED Director's ability to grant reasonable extensions of time to respond to the OED Director's initial request for information. As discussed above, such extensions are important to the practitioner. But the OED Director might be compelled to deny an extension of time out of necessity if the Office only had one year from the date of initial receipt of allegations about a practitioner to obtain and consider the practitioner's side of the

story; conduct and conclude an investigation; prepare and submit the matter to the Committee on Discipline; and prepare and file a disciplinary complaint based on the Committee's probable cause determination. Likewise, it would not be in the best interest of the Office not to grant an extension because the OED Director strives to present all available, relevant evidence to the Committee on Discipline in every § 11.32 disciplinary action. By comparison, the proposed regulation follows the long-standing practice of affording a practitioner a reasonable opportunity to respond to the allegations levied against him or her.

Third, the Office is concerned that starting the one-year limitation period from the date the OED Director initially receives an allegation of misconduct might encourage dilatory responses and other delay tactics by practitioners, which would not be in the public interest. For example, a practitioner could simply choose to hinder the investigation by providing incomplete responses to § 11.22(f)(1)(ii) requests with the purpose of having the one-year limitation period run without the OED Director having received the practitioner's side of the story. This would result in a less than thorough investigation being submitted to the Committee on Discipline to determine whether probable cause exists that the practitioner engaged in misconduct.

The Office also carefully considered, but decided against proposing, an alternative regulation that starts the one-year limitation period for § 11.32 actions on the date on which the OED Director decides, after conducting a preliminary screening of the initial information about a practitioner, to obtain the practitioner's side of the story. Such a regulation would not provide the OED Director the same degree of flexibility in allowing extensions of time for the

practitioner to respond to § 11.22(f)(1)(ii) requests. Moreover, it would encroach on the sense of fair play that permeates the proposed regulation.

The Office also considered, but chose not to propose, two other regulations starting the one-year limitation period for § 11.32 actions. The first would start the limitation period on the date that the OED Director submits a fully investigated case to a Committee on Discipline panel pursuant to 37 CFR 11.32. The second would start the one-year limitation period on the date the Committee on Discipline forwards its probable cause determination to the OED Director pursuant to 37 CFR 11.23(b)(2).

In addition to actions filed under 37 CFR 11.32, the OED Director commences reciprocal disciplinary complaints under 37 CFR 11.24 and complaints for interim suspension predicated upon conviction of a serious crime under 37 CFR 11.25. Complaints under § 11.24 and § 11.25 are not submitted to the Committee on Discipline for a probable cause determination but are filed directly with the USPTO Director. See 37 CFR 11.24 and 11.25. Complaints under § 11.24 and § 11.25, however, must include a certified copy of the record showing that a practitioner was disciplined by another authority or convicted of a serious crime. Id. Obtaining certified copies of the requisite records is how the OED Director learns in a meaningful way of misconduct which can form the basis of a disciplinary proceeding brought under § 11.24 and § 11.25.

It is OED's practice to request a certified copy of the requisite records within 60 calendar days of receiving information suggesting that a practitioner has been disciplined by another authority or has been convicted of a serious crime. It also is OED's practice to contact the practitioner within

the same 60-day period for the purpose of providing the practitioner an opportunity to explain whether he or she is the same person who was disciplined by another licensing authority or convicted of a serious crime.

Here, the proposed regulation starts the one-year limitation period as of the date the OED Director receives a certified copy of the requisite records. Thus, for reciprocal discipline complaints filed pursuant to § 11.24(a), this notice proposes that the one-year limitation period commences the date on which the OED Director receives a certified copy of the record or order regarding the practitioner being publicly censured, publicly reprimanded, subjected to probation, disbarred, suspended, or disciplinarily disqualified. For interim suspension complaints filed pursuant to § 11.25(a), the limitation period begins the date on which the OED Director receives a certified copy of the record, docket entry, or judgment demonstrating that the practitioner has been convicted of a serious crime. Based on current caseload and staffing levels, the OED Director has set a goal to file § 11.24 and § 11.25 complaints with the USPTO Director within 60 calendar days of the date when OED obtains certified copies of the requisite records.

#### **Discussion of Specific Rule:**

Section 11.22 would be revised to add subsection (f)(3), which would specify that the OED Director shall request information and evidence from the practitioner prior to convening a panel of the Committee on Discipline under § 11.32. As discussed above, the second step prior to filing a complaint in a § 11.32 action is to request information or evidence from the practitioner

pursuant to § 11.22(f)(1)(ii). This allows the practitioner to provide the OED Director with his or her views as to the allegations during the course of the investigation.

Section 11.34 would be revised to add subsection (d), which would specify the time in which the OED Director may file a disciplinary complaint against an individual subject to the disciplinary authority of the Office. Specifically, in accordance with the AIA, a complaint shall be filed not later than the earlier of either ten years after the date on which the misconduct forming the basis for the proceeding occurred, or one year after the date on which the misconduct forming the basis for the proceeding is made known to an officer or employee of the Office. The date on which the misconduct forming the basis for the proceeding is made known to an officer or employee of the Office is: (a) for complaints filed pursuant to section 11.24, the date on which the OED Director receives a certified copy of the record or order regarding the practitioner being publicly censured, publicly reprimanded, subjected to probation, disbarred, suspended or disciplinarily disqualified; (b) for complaints filed pursuant to section 11.25, the date on which the OED Director receives a certified copy of the record, docket entry or judgment demonstrating that the practitioner has been convicted of a serious crime; and (c) for complaints filed pursuant to § 11.32, the date on which the OED Director receives from the practitioner, who is the subject of an investigation commenced under section § 11.22(a), a complete, written response to a request for information and evidence issued pursuant to § 11.22(f)(1)(ii).

### **Rulemaking Considerations**

**Administrative Procedure Act:** This notice proposes to prescribe regulations to implement the

statute of limitations provisions for commencing a disciplinary proceeding pursuant to the AIA. These proposed changes involve rules of agency practice and procedure and/or interpretive rules. See Bachow Commc'ns Inc. v. FCC, 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); Inova Alexandria Hosp. v. Shalala, 244 F.3d 342, 350 (4<sup>th</sup> Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims); Nat'l Org. of Veterans' Advocates v. Sec'y of Veterans Affairs, 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive).

Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law), and thirty-day advance publication is not required pursuant to 5 U.S.C. 553(d) (or any other law). See Cooper Techs. Co. v. Dudas, 536 F.3d 1330, 1336-37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice”) (quoting 5 U.S.C. 553(b)(A)). The Office, however, is publishing these proposed changes and the Regulatory Flexibility Act certification discussion below, for comment as it seeks the benefit of the public's views on the Office's proposed implementation of these provisions of the AIA.

**Regulatory Flexibility Act:** As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a regulatory flexibility analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) is required. See 5 U.S.C. 603. Nevertheless, the Deputy General Counsel for General Law of the United States Patent and

Trademark Office has certified to the Chief Counsel for Advocacy, Small Business Administration, that the changes in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The primary purpose of the proposed rule is to establish regulations pursuant to recent revisions to 35 U.S.C. 32 that govern time limits for the Office to commence a disciplinary action. This proposed rule does not increase or change the burdens of practitioners involved in disciplinary proceedings or the investigation process. There are approximately 42,000 individuals registered to practice before the Office in patent matters and many unregistered attorneys who practice before the Office in trademark matters. In a typical year, the Office considers approximately 150 to 200 matters concerning possible misconduct by individuals who practice before the Office in patent and/or trademark matters, and fewer than 100 matters per year lead to a formal disciplinary proceeding or settlement. Thus, only a relatively small number of individuals are involved in the disciplinary process. Additionally, based on the Office's experience in investigations that precede the disciplinary process, the Office does not anticipate this proposed rule will result in a significant increase, if any, in the number of individuals who are impacted by a disciplinary proceeding or investigation. Accordingly, the changes in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities.

**Executive Order 13132 (Federalism):** This notice of proposed rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).



**Executive Order 12866 (Regulatory Planning and Review):** This notice of proposed rulemaking has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993).

**Executive Order 13563 (Improving Regulation and Regulatory Review):** The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

**Executive Order 13175 (Tribal Consultation):** This rulemaking will not: (1) have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

**Executive Order 13211 (Energy Effects):** This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

**Executive Order 12988 (Civil Justice Reform):** This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

**Executive Order 13045 (Protection of Children):** This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

**Executive Order 12630 (Taking of Private Property):** This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

**Unfunded Mandates Reform Act of 1995:** The changes proposed in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect

small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 et seq.

**National Environmental Policy Act:** This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 et seq.

**National Technology Transfer and Advancement Act:** The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

**Paperwork Reduction Act:** This rulemaking does not create any information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

**Congressional Review Act:** Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.), prior to issuing any final rule, the USPTO will submit a report containing the final rule and other required

information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. However, this action is not a major rule as defined by 5 U.S.C. 804(2).

## **List of Subjects**

### **37 CFR Part 11**

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the United States Patent and Trademark Office proposes to amend 37 CFR Part 11 as follows:

## **PART 11 - REPRESENTATION OF OTHERS BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE**

1. The authority citation for 37 CFR Part 11 continues to read as follows:

**Authority:** 5 U.S.C. 500, 15 U.S.C. 1123, 35 U.S.C. 2(b)(2), 32, 41.

2. Section 11.22 is amended to add paragraph (f)(3) as follows:

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(f) Request for information and evidence by OED Director.

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(3) The OED Director shall request information and evidence from the practitioner prior to convening a panel of the Committee on Discipline under § 11.32.

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3. Section 11.34 is amended to add paragraph (d) as follows:

**§ 11.34 Complaint.**

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(d) *Time for filing a complaint.* A complaint shall be filed not later than the earlier of either ten years after the date on which the misconduct forming the basis for the proceeding occurred, or one year after the date on which the misconduct forming the basis for the proceeding is made known to an officer or employee of the Office. The date on which the misconduct forming the basis for the proceeding is made known to an officer or employee of the Office is:

(1) with respect to complaints under § 11.24, the date on which the OED Director receives a certified copy of the record or order regarding the practitioner being publicly

censured, publicly reprimanded, subjected to probation, disbarred, suspended, or disciplinarily disqualified;

(2) with respect to complaints under § 11.25, the date on which the OED Director receives a certified copy of the record, docket entry, or judgment demonstrating that the practitioner has been convicted of a serious crime; and

(3) with respect to complaints under § 11.32, the date on which the OED Director receives from the practitioner, who is the subject of an investigation commenced under section § 11.22(a), a complete, written response to a request for information and evidence issued pursuant to § 11.22(f)(1)(ii).

December 30, 2011  
Date

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David J. Kappos  
Under Secretary of Commerce for Intellectual Property and  
Director of the United States Patent and Trademark Office

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